

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0029
Sales and Use Tax
For The Tax Period 1999-2001

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ISSUE

I. Sales and Use Tax - Imposition

Authority: IC 6-2.5-2-1, IC 6-8.1-5-1 (b).

The taxpayer protests the assessment of sales tax.

II. Tax Administration- Ten Per Cent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer is a corporation primarily involved in the sale of pre-owned vehicles. The taxpayer also finances some of the vehicles sold. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department", assessed additional sales tax, penalty, and interest. The taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

I. Sales and Use Tax -Imposition

DISCUSSION

Pursuant to IC 6-8.1-5-1 (b), all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect.

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. The retail merchant is required to collect and remit the sales taxes due to the state. IC 6-2.5-2-1.

In performing the audit, the department's auditor compared the Bureau of Motor Vehicles listing of vehicles registered under the taxpayer's identification number, the taxpayer's dealer jackets, and the amounts remitted to the department. The total amount due is the balance of the tax collected per the taxpayer's records or dealer jackets plus the amount the Bureau of Motor

Vehicles report should have been paid. The total of the taxpayer's records and the Bureau of Motor Vehicles records were each decreased by the amounts that appeared on both sets of records. The remaining amount was decreased by the amount the taxpayer had actually remitted to the department. The difference is the amount of tax due the department per the audit.

The taxpayer contended that keyboarding errors caused some automobile sales to accidentally be listed twice. The taxpayer presented substantial documentation that some vehicle sales were actually duplicated in the audit. Therefore, in several instances the audit includes two assessments for sales tax associated with one sale of an automobile. . Each retail transaction is only subject to the imposition of the sales tax once. Therefore, the duplicate assessments must be deleted from the assessment.

FINDING

The taxpayer's protest is sustained as to the assessments shown to be duplicated in the assessment.

II. Tax Administration- Ten Per Cent (10%) Negligence Penalty

DISCUSSION

The taxpayer protested the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer's carelessness and inattention to detail in the keeping of accurate records constituted negligence.

FINDING

The taxpayer's protest is denied.